IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

FRIDAY, THE SEVENTEENTH DAY OF JUNE TWO THOUSAND AND ELEVEN

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HON'BLE SRI JUSTICE GODA RAGHURAM

AND

HON'BLE SRI JUST ICE P. DURGA PRASAD

W.A.No.754 of 2004

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Between:

M.A.M. Fida Ali & Sons

.. Appellant

AND

Bharat Petroleum Corporation Limited and another

.. Respondents

JUDGMENT: (Per. Goda Raghuram, J)

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By an order dated 09-01-1999 of the 2nd respondent herein, the appellant-writ petitioner was inflicted with a penalty of suspension of sales and supplies of its retail outlet for 30 days with immediate effect and a penalty of Rs.10,000/-. The order dated

09-01-1999 asserts that when M.S. samples were drawn from the appellant's retail outlet by the inspection team of the respondent-Oil Company on 2-11-1998, the Motor Spirit in lab analysis was "found to be off specifications". To what extent or degree and in what parameters it was found "off specifications" in such lab

analysis, the impugned order does not set out. This order was passed pursuant to the notice dated 09-11-1998, which merely stated that during the Special drive and consequent inspection of the appellant's outlet on 2-11-1998, sample of Motor Spirit was taken from the outlet by the team, which failed as per the IOC, Sanathnagar Lab test report. Even the show cause notice does not specify the misconduct/error/ transgression committed by the appellant.

Assailing the suspension and fine, the writ petition was filed, which was taken up for consideration in W.P.Nos.322 of 1999 and 1324 and 324 of 1999, being other writ petitions filed by other retail outlets. W.P.No.322 of 1999 was by the appellant herein.

In the affidavit filed in support of the writ petition, the petitioner specifically asserted (in paras-8 and 9) that according to the Marketing Discipline Guidelines in operation at the relevant time i.e. 1999, there was no requirement of drawal of a sample when the motor spirit is delivered from the storage points of the respondent Oil Company into the lorry/rail tankers, which then transport the commodity to the writ petitioner's outlet. It is contended further that in the absence of any protocols in the marketing guidelines for drawal of samples while motor spirit is being delivered from the oil company's custody to the retail dealer's custody, infliction of penalties including suspension of the licence or of the permission to vend is vitiated by the absence of any transparent and verifiable procedure. It is the case of the appellant that if the motor spirit supplied by the respondent to the writ petitioner itself were outside the permissible parameters, then he would not be committing any misconduct in supplying the same quality motor spirit to the consumers. This court finds ample justification in this contention urged by the petitioner.

By the order challenged in this writ petition, the learned Single Judge, while substantively declining to interfere with the impugned order dated 09-01-1999, passed by the 1st respondent herein on the singular ground that the writ petitioner-appellant did not request the sending of the sample drawn on the spot checking on 2-11-1998 for analysis to an independent laboratory (one of the contentions urged by the writ petitioner-appellant to challenge the impugned order dated 09-01-1999) declined to grant any relief; but, observed that as the punishment was imposed in year 1999 and this Court had suspended the order of suspension of operations of the outlet, with the order continuing up to 2004 when the writ petition was heard and the writ petitioner was continuing the sales for nearly five years, the appellant may make a representation to the respondent for waiving the punishment of suspension of sales and supplies, which representation, if made, shall be considered by the respondents.

Heard Sri B. Adinarayana Rao, learned counsel for the appellant and Sri O. Manohar Reddy, learned counsel for the respondents.

Sri O. Manohar Reddy urged that since in 1999, there were no guidelines providing for drawal of a sample when the custody of the motor spirit passed from the oil company to the retailer, no such samples were drawn. Sri O. Manohar Reddy contends that the Oil Companies cannot be assumed to indulge in adulteration or supply of sub-standard products. Sri O. Manohar Reddy, learned counsel for the respondents, does not offer any empirical basis or propound any principle for the assumption that the quality control of Oil Companies is always impeccable or that the conduct of retail outlets is essentially respect. The appellant urges an eminently and compelling valid point when it asserts that in the

absence of any transparent mechanism for verification of the quality of motor spirit supplied to the retail outlet, it cannot be mulcted with liability for vending sub-standard motor spirit, unless it could be established that the motor spirit supplied to the retail outlet was of the requisite standard. Further, as was earlier adverted in this judgment, neither the show cause notice dated 09-11-1998 nor the impugned order dated 09-01-1999 set out any particulars as in what respects the motor spirit sample drawn from the appellant's retail outlet on 02-11-1998 was found to be "off specifications". That show cause notice as well as impugned order being wholly unintelligible, no penalty can be imposed on the basis of such incomprehensible proceedings. The impugned order, therefore, cannot be sustained.

Accordingly, the impugned order in the writ petition dated 09-01-1999 is set aside. It is, however, open to the 2nd respondent to issue a fresh show cause notice, if it so desires, specifying the particulars in which the motor spirit samples which were drawn from the appellant's outlet on 02-11-1998 did not conform to the prescribed specifications and after giving a reasonable opportunity to the appellant to respond to such notice, the respondents may pass an appropriate order. If in any such response, the appellant-writ petitioner reiterates the contention as to absence of verifiable procedures to establish the non-conformity of the motor spirit in the retail outlet with the quality of motor spirit supplied to it by the respondents, such contention of the appellant-writ petitioner shall also be considered by the respondents in passing final orders. It requires to be noticed that in the 2001 Marketing Discipline Guidelines, the respondents incorporated a procedure for drawing of samples at the retail outlet before the supplies or transfer from the custody of the Oil Companies to the retail outlets. This procedure being fair and transparent must in

here in all relationships between the Oil Companies and retail Outlets since it is a procedure, which confirms to the requirement of fair and reasonable opportunity under Article 14 of the Constitution of India, a requirement that is not dependent only on the Marketing and Discipline Guidelines.

For the aforesaid reasons, the appeal is allowed. The judgment of the learned Single Judge under appeal dated 01-04-2004 to the extent it pertains to W.P.No.322 of 1999 is set aside and the matter is remitted to the respondent-Oil Company as per the directions above. In the circumstances, there shall be no order as to costs.

GODA RAGHURAM, J

P. DURGA PRASAD, J

Date: 17-06-2011

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